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MEMORANDUM

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Arizona Corporation Commission

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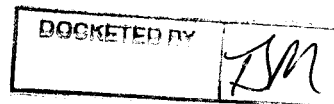
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JUL 02 2012

TO: THE COMMISSION

FROM: Utilities Division

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL



DATE: July 2, 2012

RE: IN THE MATTER OF IN THE MATTER OF THE APPLICATION OF NAVAJO COMMUNICATIONS COMPANY, INC. TARIFF FILING TO INTRODUCE IDENTIFICATION AND RATING OF VOIP-PSTN TRAFFIC (DOCKET NO. T-02115A-11-0449)

On December 15, 2011, Navajo Communication Company, Inc. ("Navajo") filed tariff revisions to introduce its Identification and Rating of VoIP-PSTN Traffic tariff. Voice over Internet Protocol ("VoIP") is a technology that allows a subscriber to make and receive voice calls using a broadband Internet connection instead of a phone line. On May 10, 2012, Navajo amended the filing to clarify the application of interstate and intrastate access rates and to clarify that the Percent VoIP Usage ("PVU") factor applies only to intrastate traffic.

On November 18, 2011, the Federal Communications Commission ("FCC") issued a Report and Order and Further Notice of Proposed Rulemaking in WC Docket Nos. 10-90, et al. (FCC 11-161) ("the USF-ICC Order") that puts in place a process that will change the current process by which carriers pay for the use of each other's facilities and network. The FCC's name for this process is "intercarrier compensation." As a result of the USF-ICC Order, carriers are filing revisions to their access tariffs to conform to the provisions of the Order. Specifically, carriers are addressing access charges imposed on VoIP-PSTN¹ traffic.

The FCC adopted the following intercarrier compensation framework for VoIP traffic, in particular, VoIP-PSTN traffic²:

Voice over Internet Protocol (VoIP): The intercarrier compensation treatment of VoIP traffic that is exchanged between LECs and other carriers has been the subject of long-running disputes. This plan does not take a position on the appropriate intercarrier compensation treatment of VoIP traffic prior to January 1, 2012. Under the plan, the Commission will adopt a new rule, effective January 1, 2012, to govern the intercarrier compensation rates applicable to VoIP traffic exchanged between LECs and other carriers. Such traffic will be rated at interstate access rates if the call detail indicates an "access" call, or at reciprocal compensation rates if the call detail indicates a "non-access" call. *All "toll" traffic that originates in IP or terminates in IP will be subject to current interstate access rates (regardless of whether it is interstate or intrastate) (Italics and underlining added.);* local termination rates would not be affected. All such traffic is incorporated into the overall transition as rates for terminating interstate access traffic are reduced and eventually unified at \$0.0007 pursuant to the comprehensive reform plan

¹ VoIP-PSTN traffic is intrastate VoIP calling that utilizes the Public Switched Telephone Network.

² The USF-ICC Order at para. 933, footnote 1869.

described below. *Under the plan, intrastate access rates will not be applied to VoIP traffic. (Italics added.)*

The USF-ICC Order also makes clear that on a going-forward basis payment obligations apply to VoIP traffic and adopts a transitional intercarrier compensation framework for VoIP.³ Under the transitional framework⁴:

- Default charges for “toll” VoIP-PSTN traffic will be equal to interstate access rates applicable to non-VoIP traffic, both in terms of the rate level and rate structure;
- Default charges for other VoIP-PSTN traffic will be the otherwise-applicable reciprocal compensation rates; (footnote omitted); and
- LECs are permitted to tariff these default charges for toll VoIP-PSTN traffic in relevant federal and state tariffs in the absence of an agreement for different intercarrier compensation.

Based on the above language and Staff’s interpretation of the USF-ICC Order, Staff believes that interstate access rates are applicable to both originating and terminating VoIP-PSTN traffic.

Frontier Communications Corp. (“Frontier”), the parent of Navajo, filed a Petition for Clarification and/or Reconsideration (“Petition”) at the FCC to clarify, or reconsider its decision to state that initially the interstate access charges for VoIP-PSTN calls will apply only for the termination of such calls and intrastate charges will apply for the origination of such calls.

On January 31, 2012, Verizon filed objections to Navajo’s proposed tariff revisions. Verizon requests that the Commission require Navajo to revise and refile its proposed tariffs to reflect application of interstate switched access rates to all PSTN-VoIP traffic, including PSTN-originating/VoIP-terminating traffic.

On March 21, 2012, AT&T Services, Inc. (“AT&T”) filed objections to Navajo’s proposed tariff revisions. AT&T requests that the Commission require Navajo to amend the proposed tariff to apply interstate rates to both IP-originating and IP-terminating traffic (including traffic that originates or terminates in the company’s own network IP format), calculate the PVU factor based solely on intrastate minutes of use, and to apply the rates retroactively to December 29, 2011.

³ The USF-ICC Order at para. 652.

⁴ The USF-ICC Order at para. 944.

On April 24, 2012, the FCC issued an Order⁵ addressing Frontier's petition, stating "it would permit LECs to tariff default rates equal to their intrastate originating access rates when they originate VoIP traffic from the effective date⁶ of the revised rules until June 30, 2014. On July 1, 2014, LECs will be permitted to tariff default rates for such traffic equal to their interstate originating access rates."⁷

During its review of numerous proposed tariff revisions to implement the FCC's decision as it relates to VoIP-PSTN calls, Staff was informed by AT&T and others that they believed that because the FCC's Order regarding these calls became effective on December 29, 2011, the new rates should apply to traffic beginning on that date and that there should be a rate adjustment. The Commission's tariff approval procedures apply meaning the tariffs become effective only after Commission approval.

Staff has reviewed the proposed tariff revisions, the relevant FCC Orders and the comments that have been filed in the Docket. Staff recommends approval of Navajo's proposed tariff revisions, as amended, with the requirement that Navajo revise its proposed tariff to include a mechanism to address VoIP-PSTN traffic that its customers originate or terminate in IP format, even if that traffic is zero (0) as discussed in the comments filed by AT&T.



Steven M. Olea
Director
Utilities Division

SMO:WMS:sms/MAS

ORIGINATOR: Wilfred Shand

⁵The USF-ICC Order, *Second Order on Reconsideration*, FCC 12-47, rel. April 25, 2012, ¶ 2 and ¶35 and footnote 96.

⁶ Id., Footnote 96, "Accordingly, our revised rules will become effective 45 days after publication in the Federal Register."

⁷ Id., ¶ 35

BEFORE THE ARIZONA CORPORATION COMMISSION

GARY PIERCE
Chairman

BOB STUMP
Commissioner

SANDRA D. KENNEDY
Commissioner

PAUL NEWMAN
Commissioner

BRENDA BURNS
Commissioner

IN THE MATTER OF IN THE MATTER OF }
THE APPLICATION OF NAVAJO }
COMMUNICATIONS COMPANY, INC. }
TARIFF FILING TO INTRODUCE }
IDENTIFICATION AND RATING OF VOIP- }
PSTN TRAFFIC. }

DOCKET NO. T-02115A-11-0449

DECISION NO. _____

ORDER

Open Meeting
July 18 and 19, 2012
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. Navajo Communications Company, Inc. ("Navajo") is certificated to provide telecommunications service as a public service corporation in the State of Arizona.

2. On December 15, 2011, Navajo filed tariff revisions to introduce its Identification and Rating of VoIP-PSTN Traffic tariff:

Access Service

Arizona Access Tariff No. 1, Check Sheet 1, 8th Revised
Arizona Access Tariff No. 1, Page 3, 2nd Revised
Arizona Access Tariff No. 1, Page 4, 1st Revised
Arizona Access Tariff No. 1, Page 41, 1st Revised
Arizona Access Tariff No. 1, Pages 41.1 through 41.5, Original

3. Voice over Internet Protocol ("VoIP") is a technology that allows a subscriber to make and receive voice calls using a broadband Internet connection instead of a phone line.

...

...

4. On May 10, 2012, Navajo amended the filing to clarify the application of interstate and intrastate access rates and to clarify that the Percent VoIP Usage ("PVU") factor applies only to intrastate traffic:

Access Service

Arizona Access Tariff No. 1, Pages 41.1 through 41.2, Original

5. On November 18, 2011, the Federal Communications Commission ("FCC") issued a Report and Order and Further Notice of Proposed Rulemaking in WC Docket Nos. 10-90, et al. (FCC 11-161) ("the USF-ICC Order") that puts in place a process that will change the current process by which carriers pay for the use of each other's facilities and network. The FCC's name for this process is "intercarrier compensation." As a result of the USF-ICC Order, carriers are filing revisions to their access tariffs to conform to the provisions of the Order. Specifically, carriers are addressing access charges imposed on VoIP-PSTN¹ traffic.

6. The FCC adopted the following intercarrier compensation framework for VoIP traffic, in particular, VoIP-PSTN traffic²:

Voice over Internet Protocol (VoIP): The intercarrier compensation treatment of VoIP traffic that is exchanged between LECs and other carriers has been the subject of long-running disputes. This plan does not take a position on the appropriate intercarrier compensation treatment of VoIP traffic prior to January 1, 2012. Under the plan, the Commission will adopt a new rule, effective January 1, 2012, to govern the intercarrier compensation rates applicable to VoIP traffic exchanged between LECs and other carriers. Such traffic will be rated at interstate access rates if the call detail indicates an "access" call, or at reciprocal compensation rates if the call detail indicates a "non-access" call. *All "toll" traffic that originates in IP or terminates in IP will be subject to current interstate access rates (regardless of whether it is interstate or intrastate) (Italics and underlining added.);* local termination rates would not be affected. All such traffic is incorporated into the overall transition as rates for terminating interstate access traffic are reduced and eventually unified at \$0.0007 pursuant to the comprehensive reform plan described below. *Under the plan, intrastate access rates will not be applied to VoIP traffic. (Italics added.)*

7. The USF-ICC Order also makes clear that on a going-forward basis payment obligations apply to VoIP traffic and adopts a transitional intercarrier compensation framework for VoIP.³ Under the transitional framework⁴:

...

¹ VoIP-PSTN traffic is intrastate VoIP calling that utilizes the Public Switched Telephone Network.

² The USF-ICC Order at para. 933, footnote 1869.

³ The USF-ICC Order at para. 652.

⁴ The USF-ICC Order at para. 944.

- Default charges for “toll” VoIP-PSTN traffic will be equal to interstate access rates applicable to non-VoIP traffic, both in terms of the rate level and rate structure;
- Default charges for other VoIP-PSTN traffic will be the otherwise-applicable reciprocal compensation rates; (footnote omitted); and
- LECs are permitted to tariff these default charges for toll VoIP-PSTN traffic in relevant federal and state tariffs in the absence of an agreement for different intercarrier compensation.

8. Based on the above language and Staff’s interpretation of the USF-ICC Order, Staff believes that interstate access rates are applicable to both originating and terminating VoIP-PSTN traffic.

9. Frontier Communications Corp. (“Frontier”), the parent of Navajo, filed a Petition for Clarification and/or Reconsideration (“Petition”) at the FCC to clarify, or reconsider its decision to state that initially the interstate access charges for VoIP-PSTN calls will apply only for the termination of such calls and intrastate charges will apply for the origination of such calls.

10. On January 31, 2012, Verizon filed objections to Navajo’s proposed tariff revisions. Verizon requests that the Commission require Navajo to revise and refile its proposed tariffs to reflect application of interstate switched access rates to all PSTN-VoIP traffic, including PSTN-originating/VoIP-terminating traffic.

11. On March 21, 2012, AT&T Services, Inc. (“AT&T”) filed objections to Navajo’s proposed tariff revisions. AT&T requests that the Commission require Navajo to amend the proposed tariff to apply interstate rates to both IP-originating and IP-terminating traffic (including traffic that originates or terminates in the company’s own network IP format), calculate the PVU factor based solely on intrastate minutes of use, and to apply the rates retroactively to December 29, 2011.

12. On April 24, 2012, the FCC issued an Order⁵ addressing Frontier’s petition, stating “it would permit LECs to tariff to tariff default rates equal to their intrastate originating access rates when they originate VoIP traffic from the effective date⁶ of the revised rules until June

⁵ The USF-ICC Order, *Second Order on Reconsideration*, FCC 12-47, rel. April 25, 2012, ¶2 and ¶35 and footnote 96.

⁶ Id., Footnote 96, “Accordingly, our revised rules will become effective 45 days after publication in the Federal Register.

1 30, 2014. On July 1, 2014, LECs will be permitted to tariff default rates for such traffic equal to
2 their interstate originating access rates.”⁷

3 13. During its review of numerous proposed tariff revisions to implement the FCC’s
4 decision as it relates to VoIP-PSTN calls, Staff was informed by AT&T and others that they
5 believed that because the FCC’s Order regarding these calls became effective on December 29,
6 2011, the new rates should apply to traffic beginning on that date and that there should be a rate
7 adjustment. The Commission’s tariff approval procedures apply meaning the tariffs become
8 effective only after Commission approval.

9 14. Staff has reviewed the proposed tariff revisions, the relevant FCC Orders and the
10 comments that have been filed in the Docket. Staff recommends approval of Navajo’s proposed
11 tariff revisions, as amended, with the requirement that Navajo revise its proposed tariff to include a
12 mechanism to address VoIP-PSTN traffic that its customers originate or terminate in IP format,
13 even if that traffic is zero (0) as discussed in the comments filed by AT&T.

14 CONCLUSIONS OF LAW

15 1. Navajo Communications Company, Inc. is a public service corporation within the
16 meaning of Article XV of the Arizona Constitution.

17 2. The Commission has jurisdiction over Navajo Communications Company, Inc. and
18 the subject matter in this filing.

19 3. The Commission, having reviewed the filing and Staff’s Memorandum dated July
20 2, 2012, concludes that approval of the proposed tariff revisions, as amended with the conditions
21 recommended by Staff, is reasonable, fair and equitable and therefore in the public interest.

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 _____
⁷ Id., ¶35.

ORDER

IT IS THEREFORE ORDERED that the Navajo Communication Company, Inc. proposed tariff revisions, as amended, with the requirement that Navajo Communications Company, Inc. revise its proposed tariff to include a mechanism to address VoIP-PSTN traffic that its customers originate or terminate in IP format, even if that traffic is zero (0) be and hereby are approved, as addressed herein.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
Executive Director of the Arizona Corporation Commission,
have hereunto, set my hand and caused the official seal of
this Commission to be affixed at the Capitol, in the City of
Phoenix, this _____ day of _____, 2012.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT: _____

DISSENT: _____

SMO:WMS:sms/MAS

1 SERVICE LIST FOR: NAVAJO COMMUNICATIONS COMPANY, INC.
2 DOCKET NO.: T-02115A-11-0449

3 Charles E. Born
4 Manager, Government & External Affairs
5 P.O. Box 340
6 Elk Grove, CA 95759

7 Donald Eachus
8 Director – State Government Affairs
9 Verizon
10 2535 W. Hillcrest Drive
11 CAM21LS
12 Newbury Park, California 91320

13 Sharon Mullin
14 Director, External Affairs
15 AT&T Services, Inc.
16 2003 Point Bluff
17 Austin, Texas 78746

18 Steven M. Olea
19 Director, Utilities Division
20 Arizona Corporation Commission
21 1200 West Washington
22 Phoenix, Arizona 85007

23 Janice M. Alward
24 Chief Counsel, Legal Division
25 Arizona Corporation Commission
26 1200 West Washington
27 Phoenix, Arizona 85007
28